

AMENDED IN ASSEMBLY MAY 9, 2005

AMENDED IN ASSEMBLY APRIL 28, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1012

Introduced by Assembly Member Nation

February 22, 2005

An act to amend Section 515.5 of the Labor Code, relating to overtime.

LEGISLATIVE COUNSEL'S DIGEST

AB 1012, as amended, Nation. Overtime compensation.

Existing law authorizes the Industrial Welfare Commission to establish exemptions from overtime wage requirements for certain employees, including certain employees in the computer software field, as specified.

This bill would make technical, nonsubstantive changes to these provisions relating to employees in the computer software field, and would require the Department of Industrial Relations, ~~contingent on adequate private funding~~, to report annually regarding the impact of these provisions on the retention in, ~~and~~ recruitment to, *and outsourcing from* California of computer consulting jobs, *including the impact on the wages, hours, overtime, and working conditions of computer consultants in California*. It would further require the department to provide ~~copies~~ *a copy* of this report to ~~the members~~ *each member* of the Assembly Committee on Labor and Employment and the Senate Committee on Labor and Industrial Relations.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 515.5 of the Labor Code is amended to read:

515.5. (a) Except as provided in subdivision (b), an employee in the computer software field is exempt from the requirement that an overtime rate of compensation be paid pursuant to Section 510 if all of the following apply:

(1) The employee is primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment, and the employee is primarily engaged in duties that consist of one or more of the following:

(A) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

(B) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.

(C) The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

(2) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of this exemption.

(3) The employee's hourly rate of pay is not less than forty-one dollars (\$41.00). The Division of Labor Statistics and Research shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

(b) The exemption provided in subdivision (a) does not apply to an employee if any of the following apply:

(1) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

1 (2) The employee is in a computer-related occupation but has
2 not attained the level of skill and expertise necessary to work
3 independently and without close supervision.

4 (3) The employee is engaged in the operation of computers or
5 in the manufacture, repair, or maintenance of computer hardware
6 and related equipment.

7 (4) The employee is an engineer, drafter, machinist, or other
8 professional whose work is highly dependent upon or facilitated
9 by the use of computers and computer software programs and
10 who is skilled in computer-aided design software, including
11 CAD/CAM, but who is not in a computer systems analysis or
12 programming occupation.

13 (5) The employee is a writer engaged in writing material,
14 including box labels, product descriptions, documentation,
15 promotional material, setup and installation instructions, and
16 other similar written information, either for print or for onscreen
17 media or who writes or provides content material intended to be
18 read by customers, subscribers, or visitors to computer-related
19 media such as the World Wide Web or CD-ROMs.

20 (6) The employee is engaged in any of the activities set forth
21 in subdivision (a) for the purpose of creating imagery for effects
22 used in the motion picture, television, or theatrical industry.

23 ~~(e) Contingent on receiving sufficient contributions from~~
24 ~~private sources dedicated to pay all associated costs, the~~
25 ~~department shall report annually regarding the impact of this~~
26 ~~section on the retention in, and recruitment to, California of~~
27 ~~computer consulting jobs, and shall provide copies of the report~~
28 ~~to the members of the Assembly Committee on Labor and~~
29 ~~Employment and the Senate Committee on Labor and Industrial~~
30 ~~Relations.~~

31 *(c) The department shall report annually regarding the impact*
32 *of this section on the retention in, recruitment to, and*
33 *outsourcing from California of computer consulting jobs,*
34 *including the impact on the wages, hours, overtime, and working*
35 *conditions of computer consultants in California. A copy of the*
36 *report shall be provided to each member of the Assembly*
37 *Committee on Labor and Employment and the Senate Committee*
38 *on Labor and Industrial Relations.*

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